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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 925.

THE UNITED STATES, APPELLANT,

vs.

MADISON J. JULIAN.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 10, 1896.

(16215.)

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 925.

THE UNITED STATES, APPELLANT,

vs.

MADISON J. JULIAN.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.—December Term, 1892.

MADISON J. JULIAN
v. } No. 17833.
THE UNITED STATES.

I. Petition.—Filed December 31, 1892

To the honorable the Court of Claims:

The claimant, Madison J. Julian, respectfully represents:

The claimant is, and has been for many years last past, a commissioner of the circuit court of the United States, for the middle district of Tennessee.

As such commissioner, he actually and necessarily performed certain official services, from the 1st day of January, 1890, to the 18th day of April, 1892, for which he duly prepared his accounts and presented the same to the United States district or circuit court for said district, by and in the presence of the United States district attorney for said district, and orders were thereupon entered approving the same except as to item #3 in acct. No. 122756 as being in accordance with law and just. Said accounts were thereafter forwarded to the accounting officers of the Treasury for settlement, who improperly disallowed the several items shown and set forth hereinafter, viz: (1) Per diem, $120.00; (2) filing recognizance bonds, $6.00; (3) orders to marshal to pay witnesses, $15.60; (4) reducing evidence to writing, $24.15; (5) entering judgments and making records, $40.75; (6) jurats to depositions, $35.80; (7) certificates to acknowledgments, $11.10; (8) certificates to recognizances, $4.60; (9) copies of process, $36.00; (10) copies of process, other than warrant, $9.60; (11) drawing affidavits of sureties, $1.10; (12) case v. C. Bohanon, $16.05, making in all the sum of three hundred and twenty dollars and sixty-five cents ($320.65), which amount he claims, besides costs.

(Said item 3 in account No. 122756 amounts to the sum of twenty-five dollars.)

No other action than as aforesaid has been had on this claim
2 in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of three hundred and twenty dollars and sixty-five cents ($320.65), besides costs.

GEORGE A. KING,
Attorney for Claimant.

STATE OF TENNESSEE,
County of Putnam, ss:

Madison J. Julian, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

M. J. JULIAN,
U. S. Commissioner.

Subscribed and sworn to before me this 21 day of December, 1892.

[SEAL.] W. T. ANDERSON,
N. P. in and for Putnam Co., Tennessee.

3 *II. Traverse.—Filed January 23, 1896.*

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney-General.

4 *III. Findings of fact and conclusion of law.—Filed February 3, 1896.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant, Madison J. Julian, was between the 1st day of January, 1890, and the 18th day of April, 1892, a commissioner of the circuit court of the United States for the middle district of Tennessee.

II.

As such commissioner he performed certain official services for the United States in hearing and deciding on criminal charges during the period aforesaid, and from time to time forwarded to the district attorney of the United States for said district his accounts for said services, verified by his affidavit, and the same were submitted to said court by said district attorney, and orders entered approving the same as being in accordance with law and just, with the exception of $25.00 of the item for per diems, which were not approved by said court, but have been proved in this court by other evidence.

5 III.

The accounts, so approved, were then forwarded to the accounting officers of the Treasury, who disallowed therein the several charges below set forth:

Item 1. Charges for per diem fees	$50.00
" 2. Charges for filing recognizances	4.80
" 3. Charges for orders to pay witnesses	15.60
" 4. Charges for jurats or certificates to depositions	35.80
" 5. Charges for copies of process	45.60
" 6. Charges for warrants for commitment for trial	2.50
" 7. Charges in case against C. Bohannon	16.05
" 8. Charges in excess of 15 cents for drawing affidavits of sureties	1.10
Total	$171.45

IV.

1. The claimant, as such commissioner, heard and decided on criminal charges in ten cases on ten different days, and charged for his services therefor at the rate of $5.00 per day. In all these cases there was a hearing upon the day charged for either of witnesses on the merits of the charge, or on motions for continuance, or on questions involving the amount and sufficiency of bail. His total charge for per diem service was $50.00.

2. He also, as such commissioner, filed final recognizances to the
6 number of 48, in cases heard before him, and charged therefor at the rate of 10 cents for each, the total charge for this service being $4.80.

3. He also, as such commissioner, drew up orders in duplicate for the marshal to pay witnesses, for which he charged at the rate of 15 cents for each folio embraced in said orders. The total number of folios embraced in said orders was 104, and the total charge for the same was $15.60.

4. He also, as such commissioner, appended his jurat or certificate to depositions, and charged therefor at the rate of 15 cents for each such jurat or certificate. The total number of jurats so appended was 238, and the total charges therefor for the same was $35.70.

5. He also, as such commissioner, sent up to the court copies of the process in the cases which had been heard before him, and charged for the same at the rate of 10 cents per folio. The total number of folios embraced in the copies of process so sent up was 456, and the total charge therefor was $45.60.

6. He also, as such commissioner, issued warrants of commitment of prisoners for trial, the said prisoners having, after their several commitments, found and given bail on the same day. For issuing said warrants of commitment he charged at the rate of one dollar for each; for entering return, 15 cents each; and for filing same, 10 cents each. There were two cases in which these services were rendered, and the total charge in both cases was $2.50.

7 7. He also, as such commissioner, performed certain official services in the second case against C. Bohannon, his charges for which, amounting to $16.05, were disallowed by the accounting officers on the ground that the two cases against said C. Bohannon should properly have been joined. In point of fact, the defendant in the second case was arrested for a different offense, committed at a later date than the one upon which he was already under bond, and the witnesses were different.

CONCLUSION OF LAW.

Upon the foregoing facts the court decides as a conclusion of law that the claimant should recover on items 4 and 7 the sum of fifty-one dollars and eighty-five cents ($51.85), and should not recover on the remaining items.

BY THE COURT.

(The court filed no opinion in this case.)

8 *IV. Judgment of the court.*

At a Court of Claims held in the city of Washington on the third day of February, A. D. 1896, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Madison J. Julian do have and recover of and from the United States the sum of fifty-one dollars and eighty-five cents ($51\frac{85}{100}$).

BY THE COURT.

9 *V. Application of defendants for and allowance of an appeal.*

From the judgment rendered in the above-entitled cause on the 3d day of February, A. D. 1896, in favor of the claimant, the defendants, by their Attorney-General, on the 24th day of February, 1896, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Atty. General.

Filed and allowed in open court February 24, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

10 In the Court of Claims.

MADISON J. JULIAN
vs.
THE UNITED STATES. } No. 17833.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court, of the application of the defen'ants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this second day of March, 1896.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 16215. Term No., 925. The United States, appellant, vs. Madison J. Julian. Court of Claims. Filed March 10, 1896.

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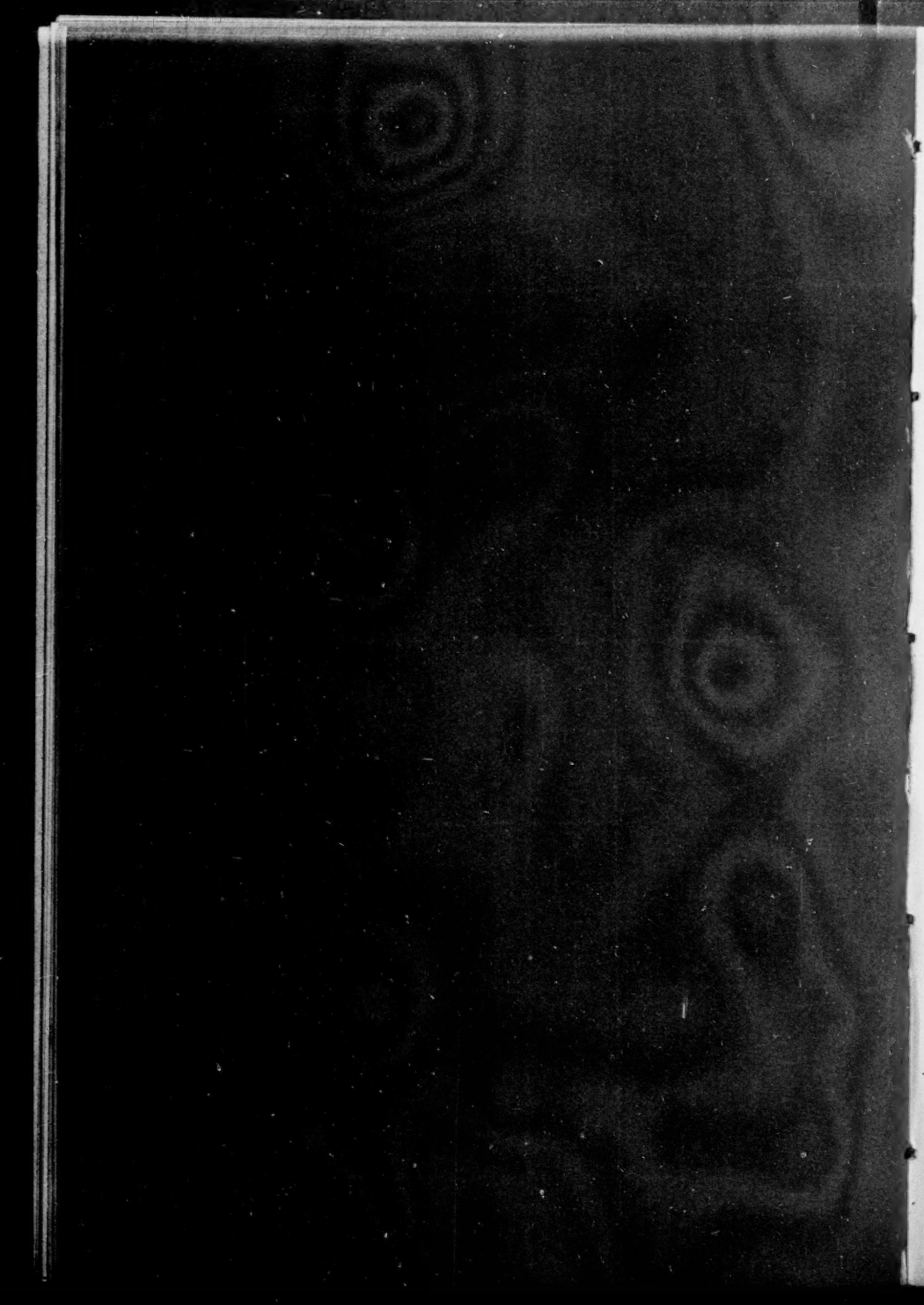
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JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

UNITED STATES, APPELLANT,
v.
MADISON J. JULIAN, APPELLEE. } No. 925.

APPELLANT'S BRIEF.



In the Supreme Court of the United States.

OCTOBER TERM, 1895.

UNITED STATES, APPELLANT,
v.
MADISON J. JULIAN, APPELLEE. } No. 925.

APPELLANT'S BRIEF.

STATEMENT.

The claimant was a circuit court commissioner for the middle district of Tennessee and brought this suit in the Court of Claims to recover certain fees disallowed upon his accounts between the 1st of January, 1890, and the 18th of April, 1892. Among the items so disallowed and sued for were "charges for jurats or certificates to depositions, $35.80," and this item was upon the trial accorded the claimant by the Court of Claims.

ASSIGNMENT OF ERROR.

The Court of Claims erred in allowing to the claimant item 4, set forth in Finding III, $35.80, for "charges for jurats or certificates to depositions," and in including the amount thereof in the judgment.

ARGUMENT.

This item is clearly *dehors* the statute which gives no fee for certifying depositions, except the greater rate per folio which is allowed for the work of writing depositions than for other writings. See sec. 828, R. S., par. 6, which prescribes a fee *for taking and certifying depositions to file, twenty cents for each folio of one hundred words.*

The question, however, which it is desired to have decided in order to guide the Treasury Department upon this charge, which is continually repeated in the accounts of commissioners and which reaches the aggregate of many thousand dollars each year, is not very perfectly presented by the language of the item as allowed by the Court of Claims. The service, in fact, rendered was the affixing of certificates or jurats to the testimony of witnesses taken upon criminal examinations and reduced to writing under a requirement of a rule of court, and for which the claimant had been allowed and paid by the accounting officers 20 cents per folio, on the ground of the analogy of the service to that of taking depositions as authorized by this court in the case of Barber, 140 U. S., 164, 168.

It would appear perfectly plain, starting with the rule laid down in the Barber Case, that the writing out of testimony upon criminal examinations when required is, in substance, taking a deposition, and that the fee prescribed of 20 cents per folio excludes an additional charge for certificates appended to such depositions. The language of the paragraph allowing 20 cents for this class of writing as distinguished from the 15 cents which is

allowed for all other documents expressly includes in that fee the service of certifying. The doubt, however, is brought in by the holding of the Supreme Court in the same Barber Case, that a complaint is also analogous to a deposition and may be charged for at the rate of 20 cents per folio and the fact also that the court allowed in that case for jurats to complaints.

It may well be contended that it is but one more step of logic from the conclusion of this court as to jurats upon complaints to the conclusion reached by the Court of Claims as to certificates to the testimony taken, but the accounting officers have been placed in the predicament of having to decide whether they shall take that logical step from the decision of this court, or whether they shall abide by the clear and unambiguous provision of the statute, and in the exercise of their duty to resolve a doubtful question in favor of the Government rather than against it, have adopted the latter alternative. It is now urged upon this court to settle that doubt finally for the future.

If, as seems plain, the disallowance of the item here in controversy is made necessary by the statute, the holding of this court that such charge is not allowable will of course control both the Court of Claims and circuit and district courts in future cases, whether the logical consistence of such decision with that of the Barber Case on the analogous charge for jurats or certificates to complaints be apparent or not.

If, however, it be desirable to go further and to reconsider that decision in the Barber Case, we venture to

suggest that the reasons which preclude the allowance of a charge for certificate whether to a complaint treated as a deposition or to the testimony of witnesses treated as a deposition, were not presented to or urged upon this court in the Barber Case.

An examination of the briefs for the Government, and especially of the motion to advance the Barber and Ewing cases (Nos. 1164 and 1117), respectively, of the October term, 1890, will show that upon these two cases was first presented the question whether a commissioner could receive any compensation for drawing a complaint, the Government contending that he could not, the claimant contending that he could. This was practically the only question argued. The claimant presented as a basis for allowance, if entitled to allowance at all, the 20-cent folio fee as for taking depositions; the Government presented no other theory of allowance, if any allowance were proper.

If the question of allowance had first been presented and settled by this court at 20 cents a folio, on the ground that the complaint was analogous to a deposition, and then the question of a charge for the certificate had come up, the attention of the court would have been drawn to the fact that the very statute which justified the 20-cent folio fee excluded any additional compensation for certificates. The charge for jurat to the complaint was not made in the Ewing Case (140 U. S., 142), in which it was first settled that drawing complaints was a service to be compensated like a deposition. In the Barber Case, decided at the same time, the certificate fee was claimed,

but was not argued as a separate item, the whole argument being simply in opposition to any compensation whatever, and when the brief in the Barber Case was written the character of the service in the drawing of complaints, of course, had not been defined by the Ewing Case.

We further venture to suggest—what was not suggested to the court upon the argument of either the Barber or Ewing Case—that the drawing of the complaint is perhaps as analogous to the service of making a record of the substance of the facts disclosed by the complainant's witnesses—for which section 828, paragraph 8, allows a fee of 15 cents per folio—as it is to the taking of a deposition, and might have been allowed on the theory that it is the record of the substance of the charge, for which the commissioner would have been entitled to 15 cents per folio and to a fee for appending a certificate or jurat.

In the McDermott Case (140 U. S., 151), cited by appellee, where this court discuss the propriety of a charge for jurat, the paper under discussion was treated as a record and allowed for at the rate of 15 cents per folio.

It should perhaps be said for the information of the court that since the decision of the Barber and Ewing cases the accounting officers have allowed just what was allowed in the Barber Case, viz, drawing complaints at 20 cents per folio, oath to same at 10 cents, and jurat or certificate to the same 15 cents, and that for taking testimony there has uniformly been allowed by the accounting officers 20 cents per folio and 10 cents for swearing the witness. The charge for certificates to such testimony has been disallowed.

We submit respectfully that the item objected to is not justified by the fee bill, and the allowance thereof by the Court of Claims was error.

J. E. DODGE,
Assistant Attorney-General.

MAR 11 1896
JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 925.

THE UNITED STATES, Appellant,

v.

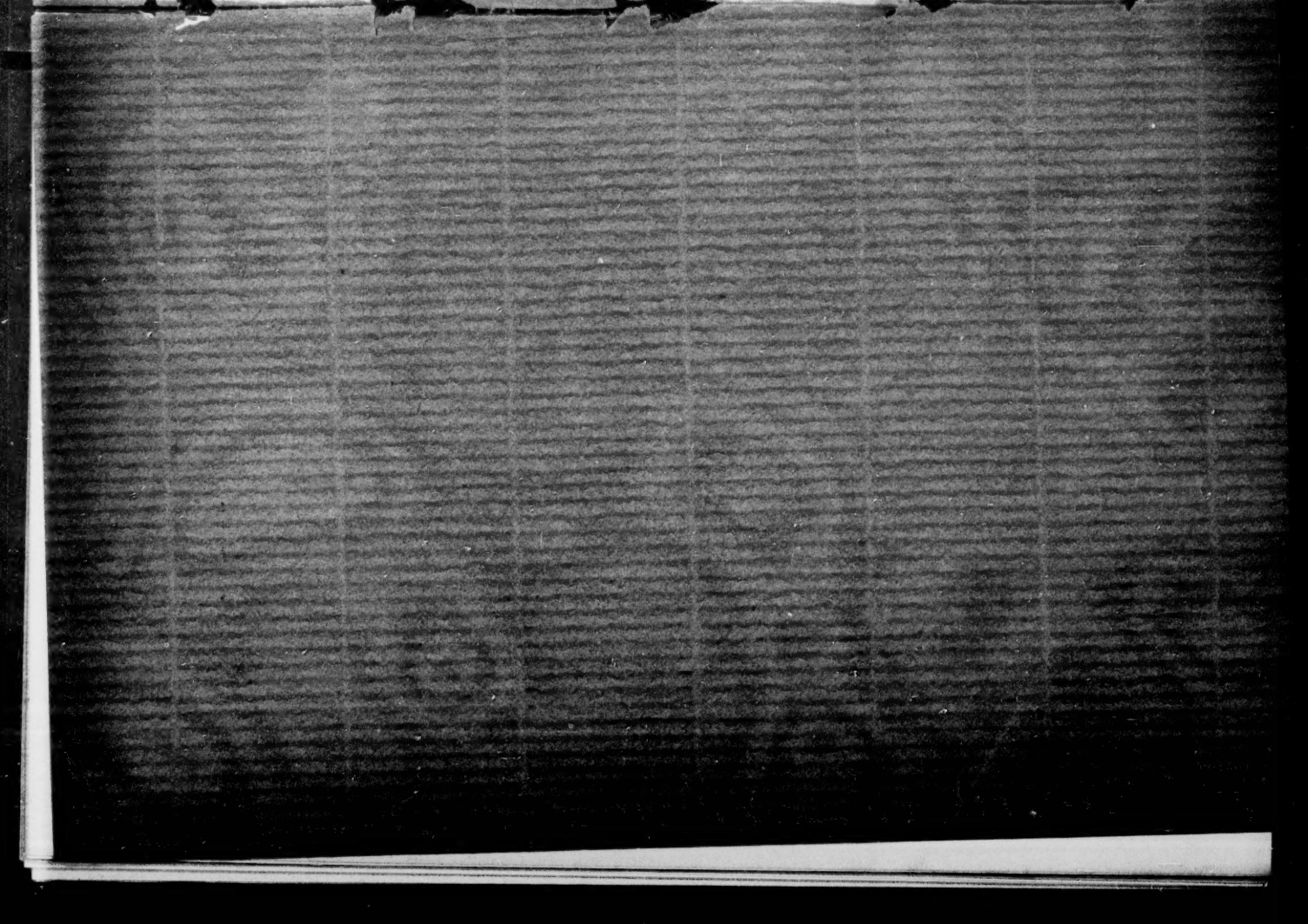
MADISON J. JULIAN.

BRIEF FOR APPELLEE.

GEORGE A. KING

Attorney for Appellee.

H. L. McQUEEN, PRINTER.



IN THE

Supreme Court of the United States.

October Term, 1895.

THE UNITED STATES, *Appellant*,
v.
MADISON J. JULIAN. } No. 925.

Brief for Appellee.

This is a claim by a United States commissioner for fees for the performance of a number of official services in criminal cases.

The Court of Claims allowed some of the items claimed and disallowed others. All those allowed had been duly approved by the Circuit Court, but the accounting officers of the Treasury refused payment.

The only error here assigned by the United States is based upon the allowance by the Court of Claims of the following item:

"4. He also, as such commissioner, appended his jurat or certificate to depositions, and charged therefor at the rate of 15 cents for each such jurat or certificate. The total number of jurats so appended was 238, and the total charges therefor for the same was $35.70."

This allowance is based upon that clause of section 847 of the Revised Statutes which, under the head of "Commissioners' Fees" gives

"For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services,"

and the clause of section 828 which, under the head of "Clerks' Fees" allows,

"For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, *certificate*, return, or report, for each folio, fifteen cents."

These clauses received an authoritative construction by this court in *United States* v. *Barber*, 140 U. S. 164, 166. There, the court after allowing fees for drawing complaints, under the head of "For taking and certifying depositions to file," also made the following allowance (p. 166):

"(*a*) Petitioner is also allowed a fee of 10 cents for each oath administered in connection with these complaints, and 15 cents for each jurat, as for a certificate. *United States* v. *McDermott*, *ante*, 151."

This was more fully explained in the case cited (*United States* v. *McDermott*, 140 U. S. 151), where it was said (p. 153):

"(*a*) With regard to the jurat, we think it a proper charge under that clause of that section 828 which allows 15 cents per folio 'for entering any return, * * * or making any record, *certificate*, return or report.' A jurat is in reality a certificate of the officer who administered the oath that the affiant had subscribed and sworn to the same before him."

These decisions settle the right to recover for these jurats as certificates, as fully as any decision of this court can settle the matter. It is true the allowance in the *Barber* case was for "jurats to complaints"; but as the allowance for the complaints was under the clause "for taking and certifying depositions to file" it is not perceived what difference there can be between that case and one like the present of depositions more strictly so-called.

The court evidently took the view that the certificate that the affidavit was "Sworn to and subscribed before me this——day of———, 189—," with the addition of the name and official designation of the commissioner, was in law a separate and independent instrument from the affidavit itself. It is submitted that this was a reasonable view, and one which should not now be abandoned, especially in view of the fact that the decision in the *Barber* case was rendered five years ago and has, as it should be, been regarded as a binding authority ever since, and as Congress has not manifested its disapproval by making any change in the fee bill.

It is submitted that the judgment of the Court of Claims should be affirmed.

GEORGE A. KING,
Attorney for Appellee.